



OFFICE OF THE PRESIDENT

Legal Services Corporation  
America's Partner For Equal Justice

January 7, 2014

Dr. Paul Maas Risenhoover  
Executive Director  
Robin Hood International Human Rights Legal Defense Fund  
27-1 Yu Nung Rd. – 5th floor, 5A3, East District  
Tainan, 70164 Taiwan, Island of Formosa  
[drpaulmaas@gmail.com](mailto:drpaulmaas@gmail.com)

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**RE: Appeal of FOIA Request No. 2013-38**

Dear Dr. Risenhoover:

I have received your Freedom of Information Act (FOIA) appeal challenging the Legal Services Corporation's (LSC) determination that it possessed no records responsive to your December 5, 2013 FOIA request.

I have reviewed LSC's response to your request and deny your appeal for the reasons explained below.

**Background Facts**

On December 5, 2013, you sent an email to LSC requesting, under FOIA, the records you described as follows:

1. All LSC records relating to a "mixed jury" or "jury de medietate linguae" or "medietate linguae" or "mediatate linguae".
2. Any LSC records relating to "Respublica v Mesca" or "United States v Cartacho".
3. Any LSC records relating to the France Hawaii treaty and US demand for like treatment for Americans tried in Hawaii, accord Hawaii v Mankichi, viz <http://digicoll.library.wisc.edu/cgi-bin/FRUS/FRUS-idx?type=turn&id=FRUS.FRUS1894Ap&entity=FRUS.FRUS1894Ap.p0074&q1=jury&q2=mediate>.
4. Any LSC records relating to <http://digicoll.library.wisc.edu/cgi-bin/FRUS/FRUS-idx?type=boolean&size=First+100&q1=jury&operator1=And&q2=mediate&operator2=And&q3=&rgn=Page+or+paragraph&size=First+100&work=>.

5. Any LSC records relating to  
<http://digicoll.library.wisc.edu/cgi-bin/FRUS/FRUS-idx?type=boolean&size=First+100&q1=jury&operator1=And&q2=medietate&operator2=And&q3=&rgn=Page+or+paragraph&size=First+100&work=>.
6. Any LSC records relating to Fenian supporters tried abroad and US invocation of the Slaughterhouse Cases privileges and immunities of American nationality protection abroad to a jury de medietate linguae.
7. Any LSC records relating to Arizona v US Scalia J. dissent reported at <http://www.supremecourt.gov/opinions/11pdf/11-182b5e1.pdf> footnote 3 and first full paragraph at dissent p. 5 on the Virginia Resolution.
8. Any LSC records relating to Madison declaring the constitutional common law alien right to a jury de medietate linguae in Statutes at Large, evidence in all courts pursuant to 1 US 112, at The Debates in the Several State Conventions on the Adoption of the Federal Constitution [Elliot's Debates, Volume 4]  
MADISON'S REPORT ON THE VIRGINIA RESOLUTIONS.

“If aliens had no rights under the Constitution, they might not only be banished, but even capitally punished, without a jury or the other incidents to a fair trial. But so far has a contrary principle been carried, in every part of the United States, that, except on charges of treason, an alien has, besides all the common privileges, the special one of being tried by a jury, of which one half may be also aliens.”

[http://memory.loc.gov/cgi-bin/query/D?hlaw:3:/temp/~ammem\\_XRvQ::pg.556](http://memory.loc.gov/cgi-bin/query/D?hlaw:3:/temp/~ammem_XRvQ::pg.556)  
[http://memory.loc.gov/cgi-bin/ampage?collId=lled&fileName=004/lled004.db&recNum=567&itemLink=D?hlaw:3:/temp/~ammem\\_XRvQ::%230040568&linkText=1](http://memory.loc.gov/cgi-bin/ampage?collId=lled&fileName=004/lled004.db&recNum=567&itemLink=D?hlaw:3:/temp/~ammem_XRvQ::%230040568&linkText=1)

On December 23, LSC’s FOIA Officer responded to your request, informing you that “a thorough search of [LSC] files produced no records responsive to your request.”

Later that day, LSC received your appeal challenging the adequacy of LSC’s search because “the reply of LSC[] . . . did not indicate which search terms were used, nor which databases searched . . . .” I address your argument below.

### Analysis

The Freedom of Information Act, 5 U.S.C. § 552, made applicable to LSC by the LSC Act, 42 U.S.C. § 2996d(g), and implemented by LSC regulations at 45 C.F.R. § 1602 *et seq.*, defines the term “search” as “to review, manually or by automated means, agency records for the purpose of locating those records which are responsive to a request.” 5 U.S.C. § 552(a)(3)(D). Courts require federal agencies<sup>1</sup> to undertake searches that are “reasonably calculated to uncover all relevant documents.” *Weisberg v. Dep’t of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). “The adequacy of an agency’s search is judged by a test of ‘reasonableness,’ which will vary from case to case.” *Id.* at 1351.

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<sup>1</sup> LSC is considered a “federal agency” for purposes of the FOIA. 42 U.S.C. § 2996d(g).

“Where . . . a search would be futile, the reasonable search required by FOIA may be no search at all.” *Amnesty Int’l USA v. CIA*, No. 07 Civ. 5435, 2008 WL 2519908, at \*11 n. 17 (S.D.N.Y. June 19, 2008); *see also Sack v. U.S. Dep’t of Defense*, --- F. Supp. 2d ----, No. 12 Civ. 1754, 2013 WL 6640776, \*6 (D.D.C. Dec. 13, 2013) (holding that a search for aggregate polygraph data records would be futile based on senior official’s personal familiarity with DIA records and sworn statement that DIA did not collect polygraph data); *Safety Research & Strategies, Inc. v. U.S. Dept. of Transp.*, 903 F. Supp. 2d 1, 7 (D.D.C. 2012) (holding that a search of back-up hard drives would be “impossible, impractical, or futile” based on senior official’s declaration that those files were not organized for retrieval of individual documents or files).

In *American-Arab Anti-Discrimination Comm. v. U.S. Dep’t of Homeland Sec.*, the requester sought the release of “data on the race, ethnicity, religion, and gender of the 237 individuals detained as a result of an immigration enforcement operation in late 2004, identified in an [Immigration and Customs Enforcement (ICE)] press release of November 4, 2004.” 516 F. Supp. 2d 83, 86 (D.D.C. 2007). ICE denied the request because, among other things, “it did not maintain statistics relating to ethnicity or religion” of detainees. *Id.* The requester sued, challenging the adequacy of the search. *Id.* at 87. ICE’s Deputy Assistant Secretary for Operations submitted an affidavit reiterating that ICE did not maintain statistics on the information requested. *Id.* Finding that the Deputy Assistant Secretary was “presumed able to familiarize himself with what statistics ICE does and does not maintain,” the court found “his explanation that ICE neither maintains data on arrestees’ ethnicity or religion nor uniformly collects such information on race [to be] sufficient – if not exactly to show the adequacy of the search, then to explain why a search would be futile and [wa]s unnecessary.” *Id.* at 88.

In processing your FOIA request, LSC’s FOIA Analyst initiated a search for responsive records by forwarding it to LSC’s Office of Information Management (OIM) and Office of Legal Affairs (OLA) – the offices within LSC that were most likely, if at all, to possess records relating to your request.<sup>2</sup> Long-tenured senior officials in OIM and OLA, who are thoroughly familiar with the information that LSC does and does not collect and maintain, promptly determined that neither of their offices would have records – that is, “documentary materials . . . made or received by the Corporation *in connection with the transaction of the Corporation’s business*,” 45 C.F.R. 1602.2(g) (emphasis added) – relating to juries *de medietate linguae* or the various court cases, legal theories, and websites on criminal jurisprudence cited in your request. These subjects are simply not within the scope of the work of either office or of LSC generally.

Much like the DHS in *American-Arab Anti-Discrimination Comm.*, LSC properly determined that additional efforts to search for records responsive to your request, such as identifying potential search terms and searching particular databases, would have been futile. LSC provides grants to civil legal aid organizations in the United States. It does not represent clients in any legal proceedings, whether civil or criminal, and its grantees may not use LSC funds to represent any clients in criminal proceedings, with the exception of some criminal matters in tribal courts. LSC has no reason to, and does not, maintain business records on arcane

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<sup>2</sup> OIM is responsible for managing corporate records and grantee data. OLA provides general in-house counsel services, *e.g.*, legal advice on matters of regulatory compliance, corporate governance, and grants management, and performs corporate secretary duties for the Corporation.

matters of criminal jurisprudence. “FOIA does not demand search[es] that would be futile.” *Amnesty Int’l USA*, 2008 WL 2519908 at \*11. Therefore, I find that, under the circumstances, LSC’s search was reasonable and properly generated no responsive documents.

Moreover, nothing in the FOIA or LSC regulations requires an administrative-level FOIA response to specify the search terms used or databases searched to uncover relevant documents. *See* 45 C.F.R. § 1602.11(a)(1) and (2) (identifying the information that must be provided to a requester in an agency denial).

If you believe that my decision is in error, you may seek judicial review in a district court of the United States as provided in 5 U.S.C. § 552(a)(4).

Sincerely yours,



James J. Sandman  
President